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January 16, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 17, 2007

Case Number: TSO-0529

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual"), to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should not be granted an access authorization.

I. BACKGROUND

The individual has been an employee of a Department of Energy (DOE) contractor (the DOE Contractor) since September 2003. The DOE Contractor has requested an access authorization for the individual. In April 2006, the DOE conducted a personnel security interview (the 2006 PSI) with the individual concerning information collected during his background investigation. In October 2006, the individual was evaluated by a DOE-consultant psychiatrist.

In June 2007, the Manager of the DOE's Local Security Office (LSO) where the individual is employed (the Manager) issued a Notification Letter to the individual. The Notification Letter indicates a security concern under Sections 710.8(j) and (k) of the regulations governing eligibility for access to classified material. With respect to Criterion (j), the LSO alleges that the individual was evaluated in October 2006 by the DOE-consultant psychiatrist, who diagnosed the individual with alcohol abuse. The Notification Letter indicates that this diagnosis raises a security concern under Criterion (j).

The Notification Letter also refers to following statements by the individual at his 2006 PSI concerning his past use of alcohol:

(1) He stated that his consumption of alcohol climbed after he started drinking at about age 17, leveled off between the ages of twenty and thirty, escalated for two years in 1989 and 1990 and then declined in last several years to what the individual believes to be "social drinking."

(2) The individual stated that, while in the Navy in 1979 or 1980, he was charged with Driving Under the Influence, for which his base driving privileges were revoked for one year.

(3) The individual stated that if he intends to drive home, he consumes about four or five beers over a five or six hour period. He stated that about once a year, when he does not drive, he consumes enough alcohol to become intoxicated.

(4) The individual stated that he last became intoxicated two years before the April 2006 PSI.

(5) The individual stated that during the last year, he has only consumed alcohol "every other month at the most."

(6) The individual stated that he last consumed alcohol the night before the PSI.

Notification Letter *citing* the 2006 PSI at 37-39. The Notification Letter also refers to statements that the individual made to the DOE-consultant psychiatrist. The DOE-consultant psychiatrist reported that the individual told him that in 2001 and 2002, he drank to the point of intoxication, he drove while intoxicated, and he experienced alcohol related blackouts. The DOE-consultant psychiatrist also reported that the individual believed that he drove while above the legal limit for blood alcohol content as recently as 2005. See Enclosure 1 to June 2007 notification letter.

With respect to Criterion (k), the Notification Letter indicates that the individual has used illegal drugs, *i.e.*, marijuana. Specifically, the Notification Letter finds that the individual

made the following statements about his marijuana use at the 2006 PSI:

- (1) He first smoked marijuana when he was sixteen.
- (2) He smoked marijuana in about 1980 while in the Navy.
- (3) He abstained from marijuana for about twenty years.
- (4) In 2000 and 2001, he may have used marijuana a couple of times, although he has no clear recollection.
- (5) Beginning in 2002, he smoked marijuana on a regular basis as a form of self medication because he was "going through a pretty rough time." He described his use in 2002 as twice a week at first and then tapering off to once or twice a month. He last smoked marijuana in late 2002 or January 2003.

Notification Letter, *citing* 2006 PSI at 61-68. The Notification letter also refers to the DOE-consultant psychiatrist's finding that he has no confidence that the individual will not use marijuana in the future. See Enclosure 1 to June 2007 Notification Letter. 1/

The individual requested a hearing to respond to the security concerns raised in the Notification Letter. The hearing was convened on October 30, 2007 (hereinafter the "Hearing"), and the testimony focused on the individual's efforts to demonstrate that he has reformed from abusing alcohol. The testimony also focused

1/ With respect to both the criterion (j) and criterion (k) concerns, the Notification Letter includes the DOE-consultant psychiatrist's finding that the individual is someone who "does not like to be told what to do if it runs counter to what he wants to do." The DOE-consultant psychiatrist based this finding on a comment made by the individual during his psychiatric evaluation, when he discussed his reluctance to marry his girlfriend. Given the context of the remark, I do not believe that the individual's statement raises a valid concern with regard to his ability or willingness to follow DOE directives concerning the responsible use of alcohol (criterion (j)) or the avoidance of marijuana and other illegal drugs (criterion (k)). Accordingly, I will not consider this finding in my analysis.

on his efforts to show that he has reformed from his past use of marijuana and will not use marijuana in the future.

II. HEARING TESTIMONY AND DOCUMENTARY EVIDENCE

At the Hearing, testimony was received from six persons. The DOE counsel presented the testimony of the DOE-consultant psychiatrist.

The individual testified and presented the testimony of his girlfriend, his psychiatrist, a social friend, and a co-worker. 1/

A. The DOE-consultant psychiatrist

The DOE-consultant psychiatrist testified that he did not presently recall evaluating the individual in 2006 and that his testimony is based on his contemporaneous report. TR at 17. He stated that he diagnosed the individual with Bipolar II Disorder because his swings in mood do not reach the manic point - the individual exhibits mild depression and milder elation. 1/ The DOE-consultant psychiatrist stated the individual's medication for Bipolar II does not require him to avoid alcohol, because alcohol does not dampen the effect of the medication. TR at 21-22. After listening to the testimony of the individual and his witnesses at the hearing, the DOE-consultant psychiatrist was asked to update his previous evaluation. He stated that the individual's medication is effective in controlling his bipolar disorder and "that prognosis is fine and doesn't really bear on my decision here." TR at 159-160.

The DOE-consultant psychiatrist testified that the individual's four negative tests for marijuana, in September 2003, September

2/ As indicated by the testimony of the DOE-consultant psychiatrist (TR at 15-16) and by his curriculum vitae (DOE Exhibit 8), he clearly qualifies as an expert witness in the area of addiction psychiatry. The testimony of the individual's psychiatrist (TR at 93-95) and his curriculum vitae (attached to individual's October 22, 2007 e-mail) also indicates that he is an expert in the diagnosis and treatment of mental conditions.

3/ In his October 2006 Report, the DOE-consultant psychiatrist concluded that the individual's Bipolar II condition "does not cause a danger of a lapse of judgment or reliability." DOE Exhibit 7, October 2006 Report at 2. Accordingly, the DOE determined that this diagnosis did not raise a Criterion (h) concern.

2005, January 2006 and October 2007, make him more confident in accepting the individual's assertion that he has abstained from marijuana use since early 2003. TR at 26-27.

The DOE-consultant psychiatrist stated that the individual's admission that he drove while intoxicated in 2001-2002 meets the DSM-IV criteria for alcohol abuse. TR at 18. He stated that the individual's admission at his October 2006 psychiatric evaluation that he occasionally has consumed in his home the amount of alcohol that would place him above the legal limit for operating a motor vehicle indicated ongoing alcohol abuse in 2005 and 2006. He stated that the individual's decision to consume such amounts of alcohol when he knew that it was causing him problems with his eligibility for a security clearance indicated that he was continuing to abuse alcohol. TR at 161.

Finally, the DOE-consultant psychiatrist was asked to evaluate the hearing testimony concerning the individual's alleged reduced consumption of alcohol since October 2006, and assess the likelihood that the individual would continue to moderate his alcohol use and refrain from marijuana use. He stated that at his 2006 evaluation, he concluded

that it was a significant possibility that [alcohol abuse and marijuana use] would return. I'm not sure at this point that I would hold that position having heard all the testimony. That's the best I can do.

TR at 169.

B. The Individual's Psychiatrist

The individual's psychiatrist testified that he treated the individual for depression from January until August of 2001. He stated that the individual returned to treatment with him in May 2003 and that his current diagnosis is Bipolar II. He stated that he sees the individual for medical management and that the individual also has been seeing a therapist from his medical group. He testified that the individual has been compliant with treatment. TR at 96-97.

The individual's psychiatrist testified that the individual now is more stable and mature, and that he has reported no substance abuse in the last several years.

I do know that he has used alcohol on occasion, but I don't think there's been any serious problems with that in the last I would say three or four years.

TR at 97-98. He testified that the individual has shown improved consistency and performance in his employment, and that his promotions in his current position indicate that he is a reliable and stable employee. TR at 98. The individual's psychiatrist testified that the individual's relationship with his girlfriend has been fairly positive and good for the past several years. TR at 99. He stated that the individual's judgment is normal, and that he has seen no evidence that the individual has any problems following rules or respecting the obligations he has to other people. TR at 99.

He stated that he believed that the individual suffered from alcohol abuse in 2001, but that he does not see the individual's alcohol usage to be a significant problem at the present time. He testified that he probably urged the individual to abstain from alcohol in 2001 and at the beginning of his resumed treatment in 2003. TR at 116. He testified that soon after the individual resumed treatment in May 2003, the individual reported that he had too much to drink. TR at 103. The individual's psychiatrist stated that after a year or so of treatment, the individual no longer reported problems concerning problematic alcohol usage, and since that time the individual's psychiatrist has not had any concerns about his alcohol use. TR at 103, 116.

The individual's psychiatrist stated that the individual reported that his use of marijuana in 2002 and early 2003 was fairly regular, and arose from his tendency to self-medicate his bipolar condition. He testified that this indicated bad judgment by the individual, but that since he resumed medication in 2003, his judgment has normalized. TR at 105. He stated that he does not recall the individual's reporting any use of marijuana after he resumed treatment in 2003. TR at 116. He testified that if the individual stopped taking his medication, it would raise a concern about his judgment and reliability. However, he considered this prospect to be unlikely, because the individual now has a history of over four years of compliance with his medication and treatment program. TR at 105-106.

The individual's psychiatrist concluded that the individual has accommodated well to his medical regimen and has been very compliant with it, so that the risk that he would end his

prescribed treatment and revert to self-medication with alcohol or marijuana is very low. TR at 117-118.

C. The Individual

The individual stated that he has worked for the DOE contractor since September 2003 and has been subject to random drug testing since then. He has been tested in September 2003, September 2005, January 2006 and October 2007, and the results have been negative for marijuana and other illegal drugs. TR at 119-120. He stated that he loves his work with the DOE contractor and has been promoted. TR at 121-123. He stated that his attendance record is very good, and that he has used only one sick day since he began working there. He stated that he sometimes works on weekends. TR at 123-124.

The individual testified that he first experienced depression in about 1993 (TR at 144) and that he has had suicidal thoughts. TR at 156. He stated that his medication is highly effective in relieving his depression. He stated that his decision to stop medical treatment from 2001 until May 2003 was caused by financial difficulties. He testified that he had quit his job, and was without money or medical insurance. He stated at that time he believed that the depression "would go away", but that he was "sadly mistaken." TR at 127-128. He testified that after that experience, he "absolutely" has no intention of abandoning his medical treatment regimen in the future. He stated that he cannot recall missing a day of his prescribed medication and believes that "it's helped me tremendously." TR at 128.

The individual testified that during the period when he was not being treated by his psychiatrist, he used marijuana as a form of self medication to try to feel better. When the marijuana failed to help him, he stopped using it, and arranged for some financial assistance so that he could return to his psychiatrist. TR at 129.

The individual stated that he obtained the marijuana while working at a bar, and that "sometimes someone would pass me marijuana for a tip - it was my choice." TR at 154. He stated that his last use of marijuana was in the February/March 2003 time frame and that he has no intention of using marijuana or any illegal substance in the future. TR at 129.

The individual described his current use of alcohol as social drinking. He stated that he typically consumes two or three beers in social situations about once a month, and that he last consumed alcohol on the Saturday night before the hearing. He stated that

he experiences no urge to drink and that he has gone months without a drink in the past few years. TR at 130.

The individual acknowledged the accuracy of the Notification Letter's finding that during the 2001-2003 period, he frequently drank to intoxication and that he would drive while intoxicated. TR at 131. 1/ However, he believes that some of his comments that were reported by the DOE-consultant psychiatrist were misunderstood. He does not believe that he told the DOE-consultant psychiatrist that during 2005 he drove while his blood alcohol level was above the legal limit. The individual suggested that some of the confusion may have arisen because he told the DOE-consultant psychiatrist that his blood alcohol content was measurable but not above the legal limit when he drove home after having three glasses of wine with dinner. TR at 131. The individual testified that he believes that the most recent time when he drove while intoxicated was in 2002-2003, and that he has not abused alcohol since 2003. TR at 133. The individual stated that he reported to the DOE-consultant psychiatrist that as recently as 2005, he has consumed sufficient beer to know that, if he drove, he would be over the legal limit for blood alcohol content. TR at 145.

At the Hearing, the individual maintained that he has been intoxicated only once in the last four years. This incident occurred in his home in 2004 when he was drinking beer with a friend on his back deck "and it became sort of a challenge" to see who could drink the most.

I probably would have been legally intoxicated on my back porch, but I don't think that one time in four or five years is an abuse.

TR at 134. See 2006 PSI Transcript at 41. The individual admitted that at times in his life he has had a drinking problem, but that he never sought help for drinking "other than seeing a psychiatrist for depression, which I think had a lot to do with that." TR at 146.

4/ The individual also acknowledged the accuracy of information in the Notification Letter that he had frequently consumed alcohol to intoxication in his teens and early twenties and that he was disciplined for intoxication while in the military service. TR at 139-143.

The individual stated that his girlfriend's testimony at the hearing that she has never seen him drink at home is not strictly accurate, because she was present during part of the 2004 incident. He testified that he can think of no other occasion since they began living together in early 2004 when he has consumed alcohol at home.

TR at 138. The individual stated that he has experienced no problems with alcohol abuse in that last four or five years, and currently consumes alcohol less than once a week. The individual stated that he would be willing to stop drinking if it is required to receive his access authorization. TR at 149.

D. The Individual's Girlfriend

The individual's girlfriend testified that she met the individual in March 2001. She stated that after a few months of dating, she broke off contact with the individual, and did not see him for six or seven months during 2002. TR at 61, 70. She stated that they resumed their relationship in 2003 and have shared a house together since about 2004. TR at 81. She described her relationship with the individual as good, adult, mature and predictable. TR at 61 and 66. She stated that they spend most evenings together at home.

She also testified that the individual has a large group of social friends, and that she enjoys socializing with them. She stated that when they get together with friends, "it's usually at their house on the lake for a cookout." TR at 63. She stated that she is always with the individual when he is engaged in social activities. TR at 65.

The individual's girlfriend testified that she has never observed the individual using marijuana or other illegal drugs, but that she cannot testify concerning the period of several months in 2002 and early 2003 when she and the individual were not in contact. TR at 64, 73-74.

With regard to alcohol, the individual's girlfriend testified that he consumes alcohol on social occasions, but not a lot. She stated that she has seen him drink beer and "an occasional Scotch [whiskey], only under social circumstances, only when he does not have to be at work." TR at 70-71. She stated that the individual last consumed alcohol the previous weekend when he drank "a beer or two" while watching a football game at a neighbor's house. TR at 71.

She testified that she has never seen the individual intoxicated, which to her meant "unable to drive, unable to stand up." TR at 74. She stated that she and the individual arrange in advance

that one of them will not drink at a social function so that person can drive the other home. TR at 74-75. She testified that she has never felt that she had to drive because the individual was drunk.

TR at 75. She stated that they keep alcohol in their home, but that she and the individual do not drink at home unless they are entertaining friends. She testified that the individual consumes alcohol about once a month when they are socializing with friends.

TR at 75-76.

The individual's girlfriend stated that she knows that the individual has been diagnosed with depression and that he sees a doctor. TR at 73. She testified that she has not seen the individual exhibit any attributes of depression in the years that they have lived together. TR at 73.

E. The Individual's Social Friend

The individual's social friend testified that she first met the individual in 2001 when he began dating his girlfriend. She stated that she and the individual's girlfriend have been best friends for several years. She stated that the individual and his girlfriend moved into her neighborhood four years ago and that, since then, she and her husband have socialized with them on a frequent basis.

TR at 82-83 and 86.

She testified that when she is with the individual in social settings, his behavior is always acceptable and that nothing about his behavior suggests a problem with alcohol or drugs. TR at 84. She has never seen him use any type of illegal substance. TR at 85. The individual's social friend testified that the individual consumes two to three beers over the course of a cookout or a football game. TR at 86. She said that she has never seen the individual intoxicated. TR at 88. She testified that she and her husband recently spent Saturday evening with the individual and his girlfriend at a football/halloween gathering, and that the individual consumed one beer during the time that she was at the party. TR at 90-91.

F. The Individual's Co-worker

The individual's co-worker testified that she worked closely with the individual from September 2003 until early 2006, when he was promoted. She now sees him on a daily basis and occasionally works with him. TR at 40-42 and 45-46. She stated that when she and the individual were working together, he was reliable and very

dependable, only taking one sick day in a three-year period. TR at 43.

The individual's co-worker stated that she has not observed the individual evidencing any indications that he has consumed alcohol prior to entering the workplace. She confirmed that she and the individual are subject to random drug tests for marijuana and other illegal drugs. TR at 44. The individual's co-worker stated that the individual has a carefree personality, but that he also is highly trustworthy. TR at 47. She stated that he is on call to report for work on weekends if he is needed. TR at 50.

III. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing (Case No. VSO-0005)*, 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS

The individual believes that he is reformed from his past alcohol abuse and from his past use of marijuana. He contends that his abuse of alcohol and use of marijuana in the 2002 through March 2003 period arose from his effort to self medicate the depression relating to his Bipolar II disorder. He asserts that since May 2003, he has been following a successful treatment and medication regimen with his psychiatrist for his bipolar condition, and that he is committed to following that regimen in the future. At the Hearing, he asserted that he last became intoxicated in 2004, and now consumes only moderate amounts of alcohol. He also contends that he has been abstinent from marijuana use since March 2003. For the reasons stated below, I conclude that the individual has not mitigated the Notification Letter's Criteria (j) and (k) concerns.

A. Criterion (j) Concerns

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with alcohol problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. In making this determination, Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals.

The DOE-consultant psychiatrist asserted that the individual's admission to him in 2006 that he occasionally consumes an amount of alcohol that would place him above the legal limit for operating a motor vehicle continues to raise a concern that he may have future problems with alcohol. However, the DOE-consultant psychiatrist testified that he is no longer prepared to say that there is a significant possibility that the individual's past problems with alcohol would return. The individual's psychiatrist testified that he does not see the moderate level of social drinking currently reported by the individual to be a significant problem. He stated that the individual has had four years of successful treatment for his Bipolar II condition, and that it is unlikely that the individual would now stop his prescribed medication and return to attempts at self medication either with alcohol or marijuana.

This expert testimony generally supports the individual's claim that he is reformed from alcohol abuse. However, in order to mitigate the DOE's Criterion (j) concerns, the individual also must present evidence sufficient to demonstrate the accuracy of his

assertions that he is drinking responsibly. 1/ As discussed below, the individual has made contradictory statements about his drinking at his April 2006 PSI, at his October 2006 evaluation by the DOE-consultant psychiatrist, and at the Hearing. Further, he has not brought forward sufficient corroborative evidence to establish a consistent pattern of responsible drinking.

When asked to discuss his current alcohol consumption at his April 2006 PSI, the individual stated that during the summer months, he and his girlfriend visit friends at a lakeshore property about twice a month and drink beer in the evening. He described his consumption of beer on these occasions as follows:

If I'm going to drive home, four or five beers over a five or six hour period. If we're going to stay there, on an occasion, probably once a year, I have too much to drink, I become intoxicated.

DOE Exhibit 6, 2006 PSI Transcript at 38. In October 2006, he reported to the DOE-consultant DOE-consultant psychiatrist that in 2005, he consumed alcohol in social situations to the point of being legally intoxicated. 1/ These statements conflict with his assertion at the Hearing that his most recent incident of alcohol intoxication occurred at his home in 2004. The individual also

5/ I believe that such a showing by the individual is in accordance with the revised "Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968", that were originally published as an appendix to Subpart A of the Part 710 regulations at 66 Fed. Reg. 47061 (September 11, 2001). The revised Adjudicative Guidelines provide that security concerns raised by an individual's excessive alcohol consumption can be mitigated if the individual acknowledges the issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of responsible use. See Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).

6/ I accept the individual's contention that he did not tell the DOE-consultant psychiatrist at his 2006 evaluation that he drove while intoxicated in 2005. The individual's position is consistent with the account he provided at his 2006 PSI and with his girlfriend's hearing testimony that the individual is very careful not to drive after consuming alcohol.

testified at his 2006 PSI that when he is at home in the summer, he will occasionally sit out back in the evening, after mowing the lawn, and "drink a beer or two." PSI Transcript at 37. This statement also conflicts with his testimony at the hearing that he has not consumed alcohol in his home since the incident when he became intoxicated in 2004.

Nor has the individual established that his incidents of consuming of alcohol to the point of intoxication have been rare and isolated events since 2003. In my August 22, 2007 letter to the individual, I encouraged him to present witnesses at the Hearing "such as close friends and family members" who are able to corroborate his testimony concerning his responsible use of alcohol. 1/ As discussed below, I do not believe that the witness testimony at the Hearing was sufficient to support the individual's contention that he has a responsible pattern of alcohol use.

The testimony of the individual's girlfriend and his social friend fails to provide adequate corroboration for the individual's assertion that his consumption of alcohol has been occasional and moderate since 2003, with only rare instances of consumption to the point of intoxication. 1/ In testifying concerning the individual's consumption of alcohol at their home, his girlfriend did not mention the 2004 incident of intoxication on the individual's back porch, an incident that the individual later stated that she witnessed. She also apparently is unaware that the individual drinks beer in his back yard after mowing the lawn, as reported by the individual at his 2006 PSI. This raises the concern that the individual may be concealing some of his alcohol consumption from his girlfriend.

7/ At the October 22, 2007 telephone conference in this proceeding, I urged the individual's counsel to add to the individual's list of prospective witnesses. I recommended that in addition to the individual's girlfriend and his co-worker, the individual's counsel should present the testimony of social friends or relatives of the individual who could testify concerning the individual's drinking habits and his exposure to marijuana use since 2003. Following, this conversation, the individual's counsel added only the individual's social friend to his witness list.

8/ The individual's doctor stated that he relied on the individual's self reporting of his alcohol use, and his co-worker testified that she has no direct knowledge of the extent of the individual's alcohol consumption outside the workplace.

With regard to the individual's social drinking, his girlfriend stated that she has never seen the individual drink to the point where he is "unable to stand up" or "falling down drunk", but she stated that she did not know whether at social functions he occasionally consumed more than the legal limit for driving. TR at 74-75. Overall, the girlfriend's testimony was not informative about the individual's use of alcohol.

The testimony of the individual's social friend provides only partial support for the individual's assertion that he is now a moderate social drinker. The social friend testified that the individual consumes alcohol in moderation when she socializes with the individual and his girlfriend in their homes and in the homes of mutual friends. She did not testify that she has been present with the individual and his girlfriend when they socialize with the individual's friends at a nearby lake on summer weekends. As noted above, the individual admitted at the 2006 PSI that he consumes more alcohol when he is socializing with his friends at the lake on summer weekends. 2006 PSI at 38.

Finally, the individual's girlfriend testified that the individual has a large group of social friends, and that they enjoy socializing with these friends. The testimony of more of these social friends, particularly friends who are familiar with the individual's alcohol consumption on summer weekends at the lake, would have been useful to corroborate the individual's assertion at the Hearing that he drinks responsibly in all social situations. Accordingly, I find that the individual has not established that he has consumed alcohol responsibly in recent years.

A. Criterion (k) Concerns

With regard to the Notification Letter's Criterion (k) concerns, I find that the testimony and drug testing evidence presented by the individual provide sufficient support for his assertion that he has not used marijuana since March 2003. At the Hearing, the individual testified candidly about how he procured and used marijuana in 2002-2003 at a bar where he was working. He stated that he used marijuana in an effort to self-medicate symptoms of bipolar disorder, and that these symptoms are now being treated effectively with prescribed medication. He asserted that he is committed to abstaining from using marijuana in the future.

The individual's girlfriend and his social friend testified that they have never seen the individual use marijuana. The individual's psychiatrist testified that the individual has not

reported using marijuana since 2003. Most importantly, the individual's co-worker testified that the individual has been subject to random drug testing since September 2003, and that he has never failed a drug test. The individual submitted four drug tests taken in September 2003, September 2005, January 2006 and October 2007, all of which are negative for marijuana and other illegal drugs. Individual's Exhibit 1.

However, in addition to abstaining from the use of marijuana, the individual also should demonstrate to the DOE that he is avoiding persons and social situations where contact with marijuana or marijuana use is likely to occur. See *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* at 12. While the individual no longer works at the bar where he obtained marijuana in 2002-2003, he has reported contact with marijuana in the context of a social function at the nearby lake where he and his girlfriend are frequent visitors. At the 2006 PSI, the individual stated that he was offered marijuana in 2003 or 2004 when he and his girlfriend were attending a July Fourth gathering at the lake with twenty to twenty-five of the individual's friends.

He testified that he noticed a separate group of men off by themselves near the lakeshore, and that he knew two of them. He stated that they offered him marijuana and he refused. 2006 PSI at 70.

In light of this incident, the individual must assure the DOE that he is not in contact with marijuana during his frequent attendance at social gatherings at the lake. As discussed above, the individual did not present the testimony of his social friends who host or attend these gatherings. He has not presented witnesses who could corroborate that marijuana and other drugs are not present on these occasions. He also has not provided corroborative testimony that he has disassociated himself from longtime friends who possess or use marijuana. Accordingly, I find that the individual has not mitigated the DOE's Criterion (k) concerns arising from his past use of marijuana.

V. CONCLUSION

For the reasons set forth above, I find that the DOE properly invoked Criteria (j) and (k) concerns regarding the individual's application for an access authorization. After considering all the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I find that the individual has not mitigated the DOE's Criteria (j) and (k) security concerns. Accordingly, I cannot find at this time that granting the

individual an access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual should not be granted an access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: January 16, 2008